

**BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES**

In the Matter of the)	SUMMARY OF FACTS
Complaint Against)	AND
Rick Maedje)	STATEMENT OF FINDINGS

Cajun James filed a complaint against Rick Maedje, alleging that Maedje violated Montana Code Annotated §§ 13-35-207(4) and 13-35-209(2) when he filed a declaration for nomination as a Republican candidate for Lincoln County Commissioner.

SUMMARY OF FACTS

1. On March 23, 2000, Rick Maedje filed in the Lincoln County Clerk and Recorder's office a declaration for nomination as a Republican candidate for County Commissioner, District #3, in Lincoln County, Montana, in the primary election scheduled for June 6, 2000. At the time he filed his declaration, Maedje was living near Eureka, Montana.

2. The declaration form filled out and signed by Maedje is directed to the county election administrator, the electors of Lincoln County, and members of the Republican Party. In completing the form, Maedje attested that he was a resident of Lincoln County and that he possessed "the qualifications prescribed by the Constitution and laws of the State of Montana for the office herein named," The form was signed before a notary public.

3. This was Maedje's first attempt at running for public office. He had been considering running for approximately a year. He was waiting to see if anyone else with more political experience would file; and, when it appeared that no one else planned to file, Maedje decided to run.

4. Some time after Maedje filed his declaration for nomination Cajun James, the complainant, telephoned him. James requested a meeting, and Maedje and James met at a restaurant. Maedje believes this meeting took place approximately a week

before Easter, which was April 23. James recalls that they met one or two weeks after Maedje had filed his declaration. During the meeting James offered to loan Maedje the “Montana County Commissioner’s Handbook” (Handbook), which includes information regarding the qualifications of a candidate for county commissioner. The Lincoln County Clerk and Recorder’s Office does not distribute copies of the Handbook to county commission candidates when they file their declarations for nomination.

5. Maedje recalls that he had Easter dinner with friends (on April 23) and then afterward sat down and read the Handbook. The Handbook contains a reference to Montana Code Annotated § 7-4-2104(2), which states:

No one shall be elected as a member of said board [of county commissioners] who has not resided in the county for at least 2 years next preceding the time when he shall become a candidate for said office and was not a resident of the district at the time of filing for the primary election.

Maedje contends that this was the first time he became aware of the two-year residency requirement for a candidate for the office of county commissioner.

6. The next day, concerned about whether he met the residency requirement, Maedje telephoned a state legislator in his district and inquired about the issue. Apparently the legislator was not able to give him a definitive answer, so Maedje telephoned an attorney in private practice. The attorney likewise was unable to answer Maedje’s question.

7. On April 24, 2000, Maedje sent a letter to Coral Cummings, the Lincoln County Clerk and Recorder who also serves as the county Election Administrator. In his letter he asked for clarification regarding the apparent two-year residency requirement for county commissioners in Montana Code Annotated § 7-4-2104(2) and whether he met that requirement. His letter stated, in part:

In short, and unfortunately, I may not qualify as a **full-time** resident in the county for 2 years prior to my filing. The law is unclear to me at this juncture, and I certainly would not want to be a candidate for the office of County Commissioner if there exists law that would in fact specifically prohibit me from being “elected.” [Emphasis in original].

Maedje requested a “written recommendation on this matter in the event I believe I should provide your office with a statement of withdrawal.”

8. Cummings had several telephone conversations with Maedje after she received the letter. She obtained information from Maedje regarding his residency in Lincoln County. She advised Maedje that she would have to consult with the County Attorney to answer Maedje’s questions.

9. On April 26, 2000, Cummings sent a letter to Lincoln County Attorney Bernie Cassidy requesting a legal opinion on the residency issue. Cummings enclosed a copy of the April 24 letter from Maedje and also provided Cassidy with some personal information she had obtained from Maedje regarding the circumstances that led to his residency in Lincoln County. According to the letter from Cummings to Cassidy, as a result of Maedje’s involvement in the train derailment near Alberton some years ago, Maedje had been advised by his doctor to move from the area. He had come to the Fortine area, in Lincoln County, in 1997 and stayed with friends for six or seven months. Maedje’s wife stayed in Missoula to work, and they would occasionally visit each other, with Maedje sometimes traveling to Missoula and his wife sometimes traveling to the Fortine area. Maedje again stayed in the Fortine area for seven or eight months during 1998 and finally purchased land in Lincoln County in August or September, 1999. He has lived in Lincoln County since purchasing the property.

10. On May 9, 2000, County Attorney Cassidy sent a letter to Cummings in which he stated that he could not reach a legal conclusion on the question of whether Maedje met the residency requirements established by law. Noting that “it is ultimately Mr. Maedje’s decision to determine whether or not he is eligible for the position of county commissioner,” the county attorney also stated:

Determination of residency is always a question that depends on a significant number of variables that ultimately may have to be decided by a court to determine whether Mr. Maedje is qualified to be on the November General

Election ballot for the Republican candidate for County Commissioner from District No. 3.

In a letter dated May 12, 2000, Clerk and Recorder Cummings advised Maedje of the county attorney's opinion.

11. The primary election was held on June 6, 2000. Maedje won the primary election and thus became the Republican nominee for County Commissioner in District #3.

12. On June 12, 2000, James filed a "Contest of Nomination" in the District Court of the Nineteenth Judicial District, Lincoln County, challenging Maedje's nomination.

13. On June 28, 2000, Maedje filed a "Statement of Withdrawal" with the Clerk and Recorder, indicating his intent to withdraw as the Republican Party candidate in the general election for the office of County Commissioner, District #3. Maedje's statement also included the following observations:

After having reviewed the matters of law and pertinent Montana Supreme Court holdings and Federal Court holdings, it is clear to me I am an eligible and qualified for this office [sic]. However, it is also just as clear that engaging the matter in court would result in a long and expensive legal proceeding that, based upon the history of such proceedings, will cause final disposition of the matter to occur subsequent to the November general election.

I entered the race with optimism that I might have contributed to bettering the circumstances in our county and with the hope of substantively participating in Lincoln County public policy. It is disheartening to finally be forced to withdrawal [sic] because I can not afford the amount of money required to defend my rights as the winning nominee of the Republican party while at the same time conducting a thorough campaign.

14. On June 30, 2000, District Judge Michael Prezeau issued an Order dismissing the "Contest of Nomination" filed by James, based on Maedje's withdrawal of his candidacy.

15. While James concedes that Maedje likely did not believe he was not qualified for the office when he filed his declaration for nomination, it is apparently his contention that Maedje should have abandoned all efforts to secure the nomination after

reading the Handbook. James apparently believes that Maedje violated the statute when he continued to be a candidate after learning that he allegedly did not meet the residency requirement.

STATEMENT OF FINDINGS

James alleges that Maedje violated Montana Code Annotated §§ 13-35-207(4) and 13-35-209(2) when he filed his declaration for nomination. § 13-35-209 prohibits false or fraudulent registration of electors. The statute has nothing to do with filing declarations for nominations, so it has no bearing on the allegations in this case. § 13-35-207 prohibits various “deceptive election practices.” The statute provides, in relevant part:

A person is guilty of false swearing, unsworn falsification, or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-202, 45-7-203, or 45-7-208, as applicable, whenever the person:

..

(4) falsely makes a declaration or certificate of nomination;

...

Montana Code Annotated §§ 45-7-202, 45-7-203, and 45-7-208, referenced in the above statute, are all criminal statutes requiring proof that a person acted knowingly or purposely when violating the statute.

Montana Code Annotated § 13-35-101 states that the "penalty provisions of the election laws of this state are intended to supplement and not to supersede the provisions of the Montana Criminal Code." Montana Code Annotated § 45-2-101(34) defines "knowingly" as follows:

. . . [A] person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

Montana Code Annotated § 45-2-101(64) defines “purposely” as:

. . . [A] person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person’s conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as “purpose” and “with the purpose”, have the same meaning.

To establish that Maedje violated Montana Code Annotated § 13-35-207(4), it would be necessary to prove that, acting with one of the above mental states, he either made a false statement under oath or filed a false written statement, knowing the information in the statement was not true.

The evidence disclosed during this investigation does not support such a conclusion. Maedje believed he was eligible to run for county commissioner when he filed his declaration for nomination. After he reviewed the Handbook, he was concerned that he might not meet the two-year residency requirement established in Montana Code Annotated § 7-4-2104(2). He consulted a state legislator, a private attorney, and the Clerk and Recorder, none of whom were able to provide a definitive answer to the question. The Clerk and Recorder obtained a written opinion from the County Attorney, who was unable to make a legal determination whether or not Maedje met the residency requirement. According to his Statement of Withdrawal, Maedje eventually withdrew as a candidate, not because he believed he was not qualified but because he did not wish to engage in a prolonged court battle to settle the issue.

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CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is insufficient evidence to justify a criminal prosecution based on allegations that Rick Maedje violated Montana election laws.

Dated this _____ day of October, 2000.

Linda L. Vaughey
Commissioner